

MF 06-9

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC TRUCK GROUP, INC.
Taxpayer**

**Docket # 05-ST-0000
NTL# 00-00000000
00-00000000**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Duane D. Young, LaBarre, Young and Behnke, for ABC Trucks, Inc.; Mr. Kent Steinkamp, Special Assistant Attorney General, for the Illinois Department of Revenue

Synopsis:

The Illinois Department of Revenue (hereinafter referred to as the "Department"), issued three Notices of Tax Liability on June 24, 2005 to ABC Truck Group, Inc. (hereinafter referred to as the "Taxpayer"), in the total amount of \$5,000. The taxpayer timely protested the Notices of Tax Liability and requested a hearing. The issues in this matter include:

- 1) whether these commercial vehicles were being operated in Illinois without a valid motor fuel tax license or without properly displaying required decals, or without a valid Single-Trip Permit when required, or without a valid 30-day International Fuel Tax Agreement temporary permit;
- 2) whether the taxpayer was required to obtain such license or permit;

- 3) whether the taxpayer is a motor carrier and is that an applicable element under the statutory provision at issue;
- 4) can the Illinois Department of Revenue lawfully impose the requirements charged with herein or does the imposition of the tax violate the commerce clause because it imposes a burden/hindrance/charge and/or restraint on moving the taxpayer's inventory/commercial motor vehicles/trucks across state lines; and
- 5) whether the dealer would have been required to purchase the license/permit if it had moved such commercial motor vehicles/inventory/trucks intrastate.

The hearing was held pursuant to the request and it is recommended that the Notices of Tax Liability for Motor Fuel Use Tax be finalized as issued.

FINDINGS OF FACT:

1. The Department's *prima facie* case was established by admission into evidence of Department's Exhibits 1 and 2 consisting of three ETS-51Ps Notices of Tax Liability for Motor Fuel Use Tax (hereinafter the "NTL"s) issued to the taxpayer. (Dept. Ex. Nos. 1, 2)

2. NTL number 00000000000, in the amount of \$1,000, was issued on June 24, 2005 to John Doe, operating on behalf of the taxpayer, stating that the taxpayer was found operating in Illinois without a valid motor fuel use tax license and without properly displaying the required decals, or without a valid Illinois Single-Trip permit. (Dept. Ex. No. 1)

2. NTL number 00-000000000 in the amount of \$2,000, was issued on June 24, 2005, to Mr. Smith, operating on behalf of the taxpayer, stating that the taxpayer was found operating in Illinois without a valid motor fuel use tax license and without properly displaying the required decals, or without a valid Illinois Single-Trip permit. (Dept. Ex. No. 2)

3. NTL number 00-000000000 in the amount of \$2,000 was issued on June 24, 2005, to Mr. Jones, operating on behalf of the taxpayer, stating that the taxpayer was found operating

in Illinois without a valid motor fuel use tax license and without properly displaying the required decals, or without a valid Illinois Single-Trip permit. (Dept. Ex. No. 2)

CONCLUSIONS OF LAW:

The Department contends that the taxpayer was operating commercial motor vehicles in Illinois without valid motor fuel use tax licenses and decals pursuant to section 13a.4 of the Motor Fuel Tax Act (hereinafter referred to as the “Act”) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. (35 ILCS 505/13a.4)

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5)

Section 21 of the Act incorporates by reference section 5 of the Retailers’ Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department’s determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978)

Taxpayer disputes that the vehicles at issue qualify as commercial motor vehicles under Illinois law. Taxpayer is a retail truck dealer with locations in Normal, Illinois; Springfield, Illinois; Morton, Illinois; Peru, Illinois; Urbana, Illinois and Davenport, Iowa. Taxpayer uses

drivers to move inventory from one location to another. (Tr. p. 17) Taxpayer had just sold its Davenport store at the time of the citations and was moving inventory back to its Peru location. (Tr. pp. 10-11, 22) Each truck was driven separately. (Tr. p. 26) The president of the taxpayer asserts that he never had in his inventory nor ever sold a tri-axle tractor. Rather, he asserts the trucks at issue were tandem axle, meaning the trucks had two drive axles. (Tr. p. 19) Each of the citations issued in this matter state that a “3 axle semi-tractor came from IA to IL east bound on I-80 operating on IL DL license plate transporting trucking from Iowa into Illinois.” (Dept. Ex. Nos. 1, 2)

A “motor carrier” is defined in the Act as any person who operates or causes to be operated any commercial motor vehicle on any highway within Illinois. (35 **ILCS** 505/1.17) The Act defines “commercial motor vehicle” as: a motor vehicle used, designed, or maintained for the transportation of persons or property and either having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds . . . , or having 3 or more axles regardless of weight, or that is used in combination, when the weight of the combination exceeds 26,000 pounds . . . , except for motor vehicles operated by this State or the United States, recreational vehicles, school buses, and commercial motor vehicles operated solely within this State for which all motor fuel is purchased within this state. . . . (35 **ILCS** 505/1.16) Section 13a.4 of the Act also provides that the motor fuel use tax license shall be carried in the cab of each vehicle. (35 **ILCS** 505/13.4)

Section 13a.5 of the Act provides that the operator of a commercial motor vehicle, operated in Illinois in the course of interstate traffic by a motor carrier and not holding a motor fuel use tax license issued under the Act, may purchase a single trip permit authorizing operation of the commercial motor vehicle for a single trip. The fee for each single trip permit is \$20 and

the permit is good for 72 hours. Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license or single use permit the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b))

In Branson v. Department of Revenue, 168 Ill. 2d 247 (1995) the court stated that where the terms of a statute are unambiguous, all elements of the penalty are established by the Department's assessment and certified record. "If the taxpayer offers no countervailing evidence, the Department's *prima facie* case stands un rebutted and becomes conclusive." *Id.* at 259 In this case, taxpayer produced no evidence other than its oral assertions about the types of vehicles cited. To overcome the presumption of correctness of the Department's *prima facie* case a taxpayer must produce evidence identified with books and records kept by the taxpayer. Oral testimony is not sufficient. A. R. Barnes v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988); Masini v. Department of Revenue, 60 Ill. App. 3d 11 (1st Dist. 1978); Rentra Liquor Dealers, Inc. v. Department of Revenue, 9 Ill. App. 3d 1063 (1st Dist. 1973)

Taxpayer also raises the constitutional issue of the violation of the commerce clause of the United States Constitution and cites numerous cases in its brief¹ to support its assertion that "It is well settled that a state may not burden interstate commerce by imposing any kind of burden on goods flowing between states. One need not look far through the annotations of the commerce clause to recognize the impermissible nature of the fines sought to be imposed based upon an unconstitutional tax burden imposed on interstate commerce." (Brief of Taxpayer p. 2)

Taxpayer admits to being a retailer with locations in Iowa and Illinois. It asserts that here we have no 'carrier;' only a dealership having a location on each side of the Mississippi River.

¹ The Department did not submit a post-hearing brief. It made legal arguments as part of its closing statements following the hearing.

The ‘offense’ was crossing the river without a motor fuel stamp on the inventoried truck.” (Brief of the Taxpayer p. 2)

Taxpayer is correct, the offenses for which the NTLs were issued were operating three-axle trucks in interstate commerce and not having the proper licenses. In Owner-Operator Independent Drivers Association v. Bower, 325 Ill. App. 3d 1045 (1st Dist. 2001), the appellate court discusses the background of the Act and states that the Act imposes a tax on the consumption of fuel within the state of Illinois. The court concluded that the Act satisfies the four prongs of the Complete Auto Transit v. Brady, 430 U. S. 274 (1977) test which requires that in order to be constitutional and withstand a commerce clause challenge, a tax must be applied to an activity with substantial nexus with the taxing state, be fairly apportioned, must not discriminate against interstate commerce and is fairly related to the services provided by the state. The court determined that the Act is constitutional.

As taxpayer has provided no documentary credible evidence to contradict the Department’s *prima facie* case and the Illinois courts have upheld the constitutionality of the Act, it is recommended that the Notices of Tax Liability issued in this matter be upheld in their entirety.

Barbara S. Rowe
Administrative Law Judge
Date: July 26, 2006